

EXECUTIVE OFFICE SUMMARY REPORT

- ITEM: 8
- SUBJECT: Appeal of Water Quality Investigation Order No. R9-2006-0044, City of San Marcos Bradley Park/Old Linda Vista Landfill, San Diego County. The San Diego Regional Water Board will hear public testimony and comments regarding the City of San Marcos' appeal of Order R9-2006-0044. The San Diego Regional Water Board will be asked to affirm the Order as amended by tentative Addendum No. 3. (Tentative Addendum 3 to Order No. R9-2006-0044) (Amy Grove)
- PURPOSE: To consider the request by the City of San Marcos to include the County of San Diego as jointly and severally responsible with the City of San Marcos for compliance with Water Quality Investigation Order R9-2006-0044. There is no tentative addendum 3 to consider for this item and the San Diego Regional Water Board is asked to affirm Investigative Order R9-2006-0044, as amended by Addenda 1 and 2.
- PUBLIC NOTICE: The Notice of Public Hearing on this item was published on April 13, 2007 as agenda item number 8 on the San Diego Regional Water Board agenda for May 9, 2007.
- DISCUSSION: Between the years 1948 and 1968, the County of San Diego owned, operated and discharged wastes into the Bradley Park Landfill (see Attachments 1a and 1b to this EOSR). Upon completion of waste disposal activities, it is the understanding of the San Diego Regional Water Board staff that the County of San Diego covered the wastes with soil. According to information provided to the San Diego Regional Water Board staff, the City of San Marcos acquired the property in 1968, which redeveloped the landfill into a park and recreation area. The City of San Marcos is responsible for post-closure maintenance and monitoring of the Bradley Park Landfill under waste discharge requirements for inactive landfills (Order 97-11 and addenda thereto).
- On April 9, 1997 the San Diego Regional Water Board adopted General Waste Discharge Requirements Order No. 97-11, "*General Waste Discharge Requirements for Post-*

Closure Maintenance of Inactive Landfills Containing Hazardous and Nonhazardous Waste within the San Diego Region.” On June 14, 2000 the San Diego Regional Water Board adopted Addendum No. 1 to Order No. 97-11 updating the general waste discharge requirements and identifying several landfills that would be suitable for regulation under general waste discharge requirements, including the “Bradley Park/Old Linda Vista Landfill” A.K.A. the “Bradley Park Landfill.” When the Bradley Park Landfill was added to Order 97-11, the San Diego Regional Water Board named the City of San Marcos as the “Discharger”, responsible to maintain the post-closure maintenance and monitoring of the landfill as specified in Order 97-11 and addenda thereto.

The City of San Marcos was aware of the San Diego Regional Water Board staff’s intent to enroll the Bradley Park Landfill under Order 97-11, and the City was notified of the applicable requirements in Order 97-11, issued pursuant to Water Code section 13263 (see Attachment 12 to this EOSR). Based upon the action taken by the San Diego Regional Water Board in 2000, the City of San Marcos is properly identified as the Discharger responsible for compliance with requirements of Order 97-11 and addenda thereto. Section 13320 of the Water Code, provides any person aggrieved by an action of a Regional Water Board 30 days to petition the Regional Water Board’s action to the State Water Resources Control Board for administrative review. The City of San Marcos failed to seek administrative review of Addendum No.1 to Order 97-11 within the jurisdictional 30-day period. Therefore the issue of the City’s responsibility for post-closure maintenance and monitoring at the Bradley Park Landfill is no longer open to challenge (see Attachments 11a through 11e to this EOSR).

The City of San Marcos’ contention that the County of San Diego should also be held responsible for implementing Investigative Order R9-2006-0044 is partly based on a Joint Exercise of Powers Agreement (JPA) entered into by the above-referenced parties in August 1986 (see Attachment 6 to this EOSR). The San Diego Regional Water Board is not a party to the JPA agreement between the City of San Marcos and the County of San Diego. While the JPA appears to allocate responsibility for the Bradley Park Landfill between the City of San Marcos and County of San

Diego, and may in fact create contractual obligations between the City and County, their respective agreement to allocate responsibility for the Bradley Park Landfill does not compel the San Diego Regional Water Board to adjust its allocation of responsibility

In November 2004, the San Diego Regional Water Board staff was informed by the County of San Diego Department of Public Works (DPW), that a liquid seep had been discovered at the Bradley Park Landfill. The County DPW staff provided the San Diego Regional Water Board staff with analytical results in a Seep Investigation Report on January 20, 2005. On January 26, 2005 the San Diego Regional Water Board staff conducted a compliance inspection and determined that the seep of polluted water was leaking into the storm water conveyance system at the site (Attachment 8 to this EOSR). On April 17, 2006 the San Diego Regional Water Board Executive Officer issued Water Quality Investigation Order No. R9-2006-0044 (Attachments 2, 3 and 4 to this EOSR) for the Bradley Park Landfill under the authority of California Water Code section 13267. Order R9-2006-0044 requires the City of San Marcos (the "Discharger") to develop an Evaluation Monitoring Program pursuant to the applicable requirements of California Code of Regulations Title 27.

On May 16, 2006 the City of San Marcos submitted a written request to the San Diego Regional Water Board staff for a hearing to appeal the issuance of Water Quality Investigation Order R9-2006-0044. The City of San Marcos asserts that the County of San Diego should also be a named Discharger on Water Quality Investigation Order R9-2006-0044, based upon the execution of the JPA.

From November 2006 until January 2007, the City of San Marcos and County of San Diego submitted legal briefs and exhibits to support their positions regarding the question of liability for compliance with Order R9-2006-0044. On February 9, 2007, the San Diego Regional Water Board staff convened an informal hearing with the parties to discuss the assertions made in their legal briefs and additional information provided by the City of San Marcos and the County of San Diego. On August 28, 2006, the City of San Marcos requested that the appeal be held in abeyance pending an attempt by the City of San Marcos and the

County of San Diego (the parties) to resolve their dispute concerning responsibility for compliance with Order R9-2006-0044. On August 28, 2006, the legal counsel for the City of San Marcos sent a letter requesting that the San Diego Regional Water Board staff proceed with appeal of Order R9-2006-0044.

KEY ISSUES: Should the San Diego Regional Water Board amend Water Quality Investigation Order R9-2006-0044 to add the County of San Diego as jointly and severally responsible for compliance with investigation Order R9-2006-0044 for the Bradley Park/Old Linda Vista Landfill?

LEGAL CONCERNS: Does the Joint Exercise Powers of Agreement (JPA) entered into by the City of San Marcos and the County of San Diego requires the San Diego Regional Water Board to re-allocate responsibility for compliance with Water Quality Investigation Order R9-2006-0044.

SUPPORTING DOCUMENTS:

1. Location and Site Maps
 - a. Location Map
 - b. Site Map
2. Investigative Order R9-2006-0044
3. Addendum No. 1 to Investigative Order R9-2006-0044
4. Addendum No. 2 to Investigative Order R9-2006-0044
5. Technical Staff Report
6. Joint Exercise of Powers Agreement Between the City of San Marcos and County of San Diego (dated August 1986).
7. Waste Constituents in groundwater Table 1 of SWAT Report (1991).
8. RWQCB Compliance Inspection Photos from January 26, 2005
9. Appeal Documents: City of San Marcos
 - a. City Appeal Brief with attachments: November 30, 2006
 - b. City Appeal Brief Exhibits: November 30, 2006
 - c. City Reply to County's Opposition Brief: January 8, 2007
 - d. City Appeal Exhibits 1 to 28: February 9, 2007
10. Appeal Documents: County of San Diego
 - a. County of San Diego Opposition to City of San Marcos: December 27, 2006

- b. County of San Diego Opposition to Appeal Exhibits A to G: December 27, 2006
- c. County of San Diego Opposition to Appeal Exhibits H to O: December 27, 2006
- 11. Waste Discharge Requirements Order No. 97-11 with Addenda
 - a. General WDRs Order 97-11
 - b. Monitoring and Reporting Program 97-11
 - c. Order 97-11 Original Enrollees: Landfills
 - d. Addendum 1 to Order 97-11
 - e. Order 97-11 Addendum 1 Enrollees: Landfills
- 12. RWQCB and City of San Marcos Correspondence April to May 2000.
- 13. Selected Chronology for Bradley Park/Old Linda Vista Landfill

RECOMMENDATIONS: Affirmation of Investigative Order R9-2006-0044, as amended by Addenda 1 and 2, is recommended.